



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of CALIFORNIA WATER SERVICE COMPANY (U 60 W), a corporation, for an order authorizing it to increase rates charged for water service in its Chico District by \$6,380,400 or 49.1% in July 2008, \$1,651,100 or 8.5% in July 2009, and by \$1,651,100 or 7.9% in July 2010; in its East Los Angeles District by \$7,193,200 or 36.5% in July 2008, \$2,034,800 or 7.6% in July 2009, and by \$2,034,800 or 7.0% in July 2010; in its Livermore District by \$3,960,900 or 31.2% in July 2008, \$942,200 or 5.6% in July 2009, and by \$942,200 or 5.4% in July 2010; in its Los Altos-Suburban District by \$5,172,500 or 30.5% in July 2008, \$1,189,100 or 5.4% in July 2009, and by \$1,189,100 or 5.1% in July 2010; in its Mid-Peninsula District by \$5,435,100 or 23.7% in July 2008, \$1,634,200 or 5.8% in July 2009, and by \$1,634,200 or 5.5% in July 2010; in its Salinas District by \$5,119,700 or 29.8% in July 2008, \$3,636,900 or 16.3% in July 2009, and by \$2,271,300 or 8.7% in July 2010; in its Stockton District by \$7,474,600 or 29.0% in July 2008, \$1,422,400 or 4.3% in July 2009, and by \$1,422,400 or 4.1% in July 2010; and in its Visalia District by \$3,651,907 or 28.4% in July 2008, \$3,546,440 or 21.3% in July 2009, and by \$3,620,482 or 17.6% in July 2010.

A.07-07-001
(Filed July 3, 2007)

**MOTION
OF THE DIVISION OF RATEPAYER ADVOCATES
FOR SUMMARY ADJUDICATION**

Pursuant to Rule 11.1 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") files this motion for summary adjudication. In Application

(“A”) 06-12-025, the Commission is considering the post-retirement benefits other than pensions (“PBOPs”) requests that California Water Services Company (“CWS”) has also submitted in this proceeding. Therefore, DRA requests that the Commission find that CWS is collaterally estopped from requesting relief for the same issues in A.07-07-001.

I. BACKGROUND

On December 21, 2006, CWS filed A.06-12-025, requesting authority to increase its rates to: (1) fund its costs of post-retirement benefits other than pensions (commonly referred to as PBOPs); and (2) to recover the associated \$9.8 million regulatory asset over a 15 year period.¹

In its February 27, 2007 Protest in A.06-12-025, DRA opposed CWS’ recovery of the regulatory asset and contended that CWS had failed to comply with the earlier Commission decision, D.92-01-015.² After evidentiary hearings and briefing, A.06-12-025 was submitted for decision on December 17, 2007.

On July 3, 2007, CWS filed its general rate case application, A.07-07-001, in which CWS also requested authority to fund its retiree healthcare plan costs and recover its regulatory asset.³

II. ARGUMENT

In A.07-07-001, CWS is seeking the same relief it is already pursuing regarding issues that are within the scope of another pending proceeding. Since A.06-12-025 is considering the CWS’ PBOP methodology and recovery pursuant to D.92-12-015 and D.93-08-033, the Commission should find that CWS is collaterally estopped from the requesting relief for the same issues in this proceeding.

¹ See A.06-12-025, Application of California Water Service Company, pp. 1, 3.

² See generally, Protest of the Division of Ratepayer Advocates dated February 27, 2007 in A.06-12-025.

³ See General Report on the Results of Operation and Prepared Testimony of the California Water Services Company, p. 9.

Under the doctrine of collateral estoppel, “... once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.”⁴ Although a final decision has not been adopted in A.06-12-025, the doctrine of collateral estoppel should still apply since (1) A.06-12-025 is considering the same PBOP methodology and recovery issues; and (2) a final decision is expected for that A.06-12-025 far earlier than in this proceeding.

In A.06-12-125, the Commission considered many issues involved in CWS’ request regarding PBOP methodology and recovery. For example, the Commission indicated in the Scoping Memo and Ruling of the Assigned Commissioner that it would consider the following matters in its decision-making process:

- 1) Whether, and to what extent, D.92-12-015 and Commission jurisprudence provide Cal Water with discretion in its funding of employee post-retirement benefits other than pensions (PBOPs).
- 2) D.93-08-033 adopted a settlement agreement between Cal Water and DRA that required the following steps to be taken in order for Cal Water to recover FAS 106 costs in accordance with D.92-12-015:
 - a) Cal Water’s submittal of a compliance filing that demonstrated Cal Water’s compliance with D.92-12-015.
 - b) DRA’s review of the compliance filing followed by DRA’s notification to the Commission of the results of DRA’s review.
 - c) The Commission’s issuance of a decision or ruling that authorized Cal Water to file an advice letter to recover its FAS 106 costs. (Cal Water apparently filed the advice letter. See Advice Letter (AL) 1341 filed on February 23, 1994.) Cal Water and DRA shall identify and document which of the above steps were taken. If

⁴ *San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323 (2005), fn. 16.

any of the above steps were not taken, Cal Water and DRA should explain why.

- 3) The correct dates for the following documents in Exhibit 2 of A.06-12-025: (i) AL 1341 dated February 23, 2004, and (ii) a Commission letter dated June 10, 2003, that accepts AL 1341. The dates on these documents do not correspond to one another in that the letter accepting AL 1341 is dated earlier than AL 1341.
- 4) Whether DRA received a copy of AL 1341, reviewed AL 1341, and/or protested AL 1341.
- 5) Whether AL 1341 and the Commission's acceptance of the Advice Letter constitute compliance with D.92-12-015.
- 6) In the years since AL 1341, whether Cal Water has recovered PBOP costs in a manner consistent with that Advice Letter.
- 7) In the years since AL 1341, whether DRA has reviewed Cal Water's compliance with D.92-12-015.
- 8) Assuming Cal Water has requested and recovered PBOP costs in a manner consistent with AL 1341, whether it is unfair or contrary to the principles of estoppel to now prevent Cal Water's recovery of its FAS 106 regulatory asset.⁵

As indicated by the above language, the Commission has thoroughly established that the scope of issues in A.06-12-025, which extend to PBOP methodology and recovery, as well as other related issues. The request for relief in this proceeding involves the same nucleus of operative facts that were litigated in A.06-12-025, and for this reason, the Commission should find that it will not consider these issues in this proceeding.

Considering the same issues in this proceeding would be unnecessarily duplicative, especially since the A.06-12-025 focused on the specific PBOP issues. Furthermore, a finding that CWS is collaterally estopped from requesting the same

⁵ A.06-12-025, Scoping Memo and Ruling of the Assigned Commissioner, pp. 2-3.

relief in this proceeding as in A.06-12-005 will conserve judicial resources and prevent inconsistent decisions.⁶

III. CONCLUSION

For the reasons above, the Commission should find that CWS is collaterally estopped from requesting relief regarding post-retirement benefits other than pensions and the recovery of the associated regulatory asset in A.07-07-001.

Respectfully submitted,

/s/ Marcelo Poirier

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January 25, 2008

⁶ *Allen v. McCurry*, 449 U.S. 90 (1980), p. 94.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **MOTION OF THE DIVISION OF RATEPAYER ADVOCATES in A.07-07-001** by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on January 25, 2008 at San Francisco, California.

/s/ Nelly Sarmiento

Nelly Sarmiento

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